

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.39.804) ON PROPOSED AMENDMENT
and the proposed adoption of) AND ADOPTION
NEW RULE I, pertaining to)
net client hunter use)

TO: All Concerned Persons

1. On April 7, 2003, at 9:00 a.m., a public hearing will be held in Room 438, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., March 28, 2003, to advise us of the nature of the accommodation that you need. Please contact Dan Dellinger, Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsout@state.mt.us.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

8.39.804 DETERMINATION OF NET CLIENT ~~HUNTING~~ HUNTER USE
AND REVIEW OF NEW OPERATIONS PLAN AND PROPOSED EXPANSION OF NET
CLIENT ~~HUNTING~~ HUNTER USE UNDER EXISTING AND NEW OPERATIONS
PLAN(S) (1) An outfitter shall not expand net client ~~hunting~~
hunter use without first applying for and receiving approval
from the board for such expansion.

(2) Except as provided in (4) and (5) ~~below~~, net client
~~hunting hunter~~ use for outfitters shall be determined by taking
the highest total number of hunting clients served by the
outfitter and any guides working under the endorsement of the
outfitter in a year during which the outfitter was licensed in
the state of Montana, with a categorical breakdown of hunting
clients served using licenses issued no later than December 31,
1995 as follows:

(a) category 1~~+~~, consisting of nonresident deer or elk
clients holding B-10 or B-11 licenses ("big game outfitter
sponsored");

(b) category 2~~+~~ ~~deer or elk clients not holding outfitter~~
~~sponsored licenses, antelope, mountain lion, mountain sheep,~~
~~mountain goat, moose, or bear clients ("big game non-outfitter~~
~~sponsored")~~ consisting of all non-outfitter sponsored big game
species clients; and

(c) category 3~~+~~, consisting of upland game bird, turkey, and migratory game bird (waterfowl) clients ("non-big game").

(3) The outfitter shall designate net client ~~hunting~~ hunter use for each of the ~~following~~ categories, under affirmation by oath on a form provided by the board. The outfitter shall specify the year or years from which the use is designated. If use is designated from any year prior to 1988, the outfitter claiming such use must submit documentation of such use, which shall be subject to approval of the board. The use designated by the outfitter shall be subject to random audit by the board's investigators. Submission of false information regarding net client ~~hunting~~ hunter use is specifically designated as unprofessional conduct, and ~~shall~~ may result in revocation of the outfitter's license.

(4) When an existing outfitter purchases an outfitting business or any portion thereof in the state of Montana and makes application to the board for an expansion, the outfitter may designate net client ~~hunting~~ hunter use in an amount equal to his or her historical use, plus the net client ~~hunting~~ hunter use transferred from the selling outfitter to the applicant outfitter. For proposed new use by a newly licensed outfitter, net client ~~hunting~~ hunter use shall be determined by the board as part of its order under this rule.

(5) In cases where a federal agency limits ~~net-client~~ ~~hunting~~ use on federal lands, ~~net-client~~ ~~hunting~~ hunter use of the outfitter providing authorized services on such lands shall be ~~taken from the use designated~~ regulated by such federal agency. In all other cases, net client ~~hunting~~ hunter use on federal lands shall be determined under either (2), (3) or (4) as applicable.

(6) ~~An outfitter shall not exchange, trade or substitute between the categories of net client hunting use. Net client hunting use of each outfitter shall be specific as to the category designated by the outfitter (big game outfitter sponsored, big game non-outfitter sponsored and non big game). Net client hunter use of each outfitter must be specific as to the category designated by the outfitter (big game outfitter sponsored, big game non-outfitter sponsored and non-big game). An outfitter may, in any one year which the outfitter has unserved category one clients (outfitter sponsored), serve the unserved clients under category 2. An outfitter shall not exchange, trade or substitute between any other category of net client use.~~

(7) An application for proposed expansion in net client ~~hunting~~ hunter use under an existing operations plan, and applications by license applicants proposing new operations plans involving hunting use, shall be made on forms provided by the board. The board shall maintain a copy of the proposal in the board's office.

(8) and (9) remain the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-316, MCA

REASON: The Board of Outfitters has determined that it is reasonable and necessary to make these amendments regarding "Net Client Hunter Use" to be consistent with the terminology used in sections 37-47-101, 37-47-201, 37-47-316, 37-47-317 and 37-47-318, MCA. It is reasonable and necessary to amend ARM 8.39.804(2)(b) because it will allow outfitters a method of adjusting to game management changes implemented by the Montana Department of Fish, Wildlife and Parks (MFWP) as the result of changing populations of game animals. MFWP frequently closes hunting of certain species in an area and opens hunting for other species that have not been hunted in the area previously. Regarding ARM 8.39.804(2)(c), the board has determined that it is reasonable and necessary to remove the "turkey" provision because turkey is considered to be an upland game bird as defined under MFWP statute 87-2-101(15), MCA. The board has also determined that it is reasonable and necessary to amend ARM 8.39.804(3) to allow the board needed discretionary authority for disciplinary action against licensees who submit false or incorrect information regarding net client hunter use. ARM 8.39.804(5) is reasonably necessary because it clarifies federal authority over federal lands. It is reasonable and necessary to amend ARM 8.39.804(6) because this amendment will allow outfitters to take pressure away from the Category 1, Big Game Outfitter Sponsored Licenses.

4. The proposed new rule provides as follows:

NEW RULE I EFFECT OF FEE FOR EXPANSION OF NET CLIENT HUNTER USE (1) Upon approval by the board of an expansion on net client hunter use, the expansion will not become effective until the date payment is received pursuant to the provisions of 37-47-318, MCA.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-201, 37-47-316, MCA

REASON: The Board of Outfitters has determined that it is reasonable and necessary to establish the effective date of an expansion in Net Client Hunter Use, following approval of the expansion by the Board.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Outfitters, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsout@state.mt.us and must be received no later than 5:00 p.m., April 11, 2003.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Outfitters rule notice section. The department strives to make the electronic copy of this Notice conform to the official

version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Board of Outfitters maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding the Board of Outfitters administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Outfitters, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsout@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. The Board of Outfitters will meet via a telephone conference call at 9:00 a.m. on April 30, 2003, to consider the comments made by the public, on the proposed responses to those comments, and take final action on the proposed amendment and adoption. Members of the public are welcome to come to the Board's offices on the fourth floor of the Park Avenue Building, 301 South Park, Helena, Montana and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendments beyond the April 11, 2003 deadline.

9. The bill sponsor requirements of 2-4-302, MCA, do not apply.

10. Lon Mitchell, attorney, has been designated to preside over and conduct the hearing.

BOARD OF OUTFITTERS
RAY RUGG, CHAIRMAN

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 3, 2003.